

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**The Boston Edison Company, Commonwealth Electric Company,
and Cambridge Electric Light Company d/b/a NSTAR**

D.T.E. 01-65

I. INTRODUCTION

Pursuant to Department of Telecommunications and Energy (“Department”) precedent, the Attorney General seeks clarification of the Department’s March 22, 2002 Order. Specifically, the Attorney General requests that the Department clarify the legal status of the “Analysis and Findings” sections of the Order, and clarify whether evidentiary hearings will be held. Since there has been no motion to admit evidence into record, the consideration of unsworn filings, no close of the record and a continuation of the investigation by the Department, the Attorney General interprets the Order to be interlocutory in nature and that further proceedings will be held.

II. BACKGROUND

On March 22, 2002, the Department of Telecommunications and Energy (“Department”) issued an Order in *Investigation by the Department of Telecommunications and Energy on its Own Motion into the Service Quality of Boston Edison Company, Commonwealth Electric Company and Cambridge Electric Light Company, d/b/a NSTAR Electric*, D.T.E. 01-65. The Department opened the investigation into NSTAR’s service quality on August 24, 2001, following the outages that the Company’s customers experienced during July and August, 2001. In the Order opening the investigation, the Department stated that it would focus on NSTAR’s management of its

distribution system and directed the Company to provide information in growth forecasting, communication and notification procedures during outages, use of emergency generators and other equipment, personnel staffing and deployment during outages, weather forecasting and design and maintenance of its distribution system. The Department, by letter dated September 12, 2001, requested further information regarding staffing levels, training programs, and inspections. Department Letter, September 12, 2001.

On October 29, 2001, NSTAR filed a Self-Assessment Report on System Reliability with the Department. The Department held several public hearings at which the Attorney General, requested that the Department hold evidentiary hearings. (Stoneham Tr., p. 22; Brookline pp. 55-57; Medfield pp. 19-20; Hyannis p. 44; *see also* Joint Comments, pp. 2 n.1). Although the Department reviewed NSTAR's Self-Assessment Report under its general supervisory authority G. L. c. 164, §76, the Department also made evidentiary findings of fact and conclusions without convening an evidentiary hearing.

III. STANDARD OF REVIEW

A. Clarification

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order or when the order contains language that is so ambiguous as to leave doubt as to its meaning. *Boston Edison Company*, D.P.U. 92-1A-B, p. 4 (1993). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. *Boston Edison Company*, D.P.U. 90-35-A, p. 3 (1992), citing *Fitchburg Gas*

& *Electric Light Company*, D.P.U. 18296/18297, p. 2 (1976).

III. ARGUMENT

A. The “Findings” Of The Department’s Order Are Interlocutory.

Although the Department characterizes certain parts of its Order as “findings” based on the “record” (e.g., Order pp. 21-23), the Attorney General assumes these are not “findings” in an adjudicatory sense pursuant to the Administrative Procedures Act. G. L. c. 164, §30A *et seq*; *Western Massachusetts Electric Co. v. Department Public Utilities*, 373 Mass. 227, 230 (1977). The Department has requested that the Company file additional information and has deferred the Division’s request for a management audit and evidentiary hearings. (Joint Comments, pp. 2 n.1, 8). There has been no opportunity for cross-examination and the consideration by the Department of unsworn information.¹ No party moved evidence into the record and the Department gives no indication that the record has been “closed”. Under these circumstances, the purported factual “findings” based on “record” in this proceeding should be understood as interim characterizations of the evidence accumulated to date, rather than final conclusions of fact determined through due process.

¹ Unsworn statements shall not be considered as evidence. 220 C.M.R. § 1.10 (1). Department decisions must be supported by substantial evidence. *Zachs v. Department of Public Utilities*, 406 Mass. 217, 219-20 (1989). To cite, reference or otherwise rely upon extra-record evidence and statements violates the Attorney General’s due process rights and the Department’s rules and precedent. *MediaOne/New England Telephone*, D.T.E. 99-42/43, pp. 17-18 (1999); *Boston Edison Company*, D.P.U. 90-335, pp. 7-8 (1992); *Payphone Inc.*, D.P.U. 90-171, pp. 4-5 (1991); *see also* G.L. c. 30A, § 11.

WHEREFORE: the Attorney General requests that the Department clarify whether the purported findings, analyses and conclusions of the Order are interlocutory in nature, rather than final, and that the parties continue to have full rights under the Administrative Procedures Act, including ongoing discovery, adjudicatory hearings and cross-examination on the issues raised in this proceeding.

RESPECTFULLY SUBMITTED,

THOMAS REILLY
ATTORNEY GENERAL
By:

Joseph W. Rogers
Assistant Attorney General
Utilities Division
200 Portland Street, Fourth Floor
Boston, MA 02114
(617) 727-2200

April 11, 2002